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**(1990) 09 MP CK 0002**  
**In the Madhya Pradesh High Court**  
**Case No : C.R. No. 171 of 1989**

Ram Kishan Balmukund Kushwaha

APPELLANT

Vs

Devilal Nandram Kushwah

RESPONDENT

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**Date of Decision :** 08-09-1990

**Acts Referred:**

Court Fees Act, 1870 — Article 1A, 35

**Citation :** (1991) J LJ 370 : (1991) 36 MPLJ 95 : (1991) MPLJ 95

**Hon'ble Judges :** S.K. Dubey, J

**Bench :** Single Bench

**Advocate :** K.B. Chaturvedi, for the Appellant;

**Final Decision :** Allowed

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## Judgement

S.K. Dubey, J.

The petitioner, who is a plaintiff, instituted a suit against the respondents for declaration, partition and possession of his share in the suit property and permanent injunction. As the petitioner's annual income immediately preceding the date of presentation of the plaint, from all sources, did not exceed Rs. 6,000/-, the petitioner claimed exemption, from payment of court fees on the plaint in view of Notification No. F. No. 9.1.83-XXI dated the 1st April 1983, issued by the State Government in exercise of powers conferred by Section 35 of the Court Fees Act, 1870 (No. 7 of 1870), published in M. P. Rajpatra (Asadharan) dated 1st April 1983, at page 1062, reproduced in 1983 M. P. LT P 91.

Shri K. B. Chaturvedi contended that the plaintiff was entitled to an exemption from payment of court fees, as by the said Notification, the court fees was remitted in the whole of the State of Madhya Pradesh, as persons falling in the said categories specified in the Notification, were exempted from payment of court fees on the plaints, mentioned in Articles 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule to the said Act. The trial Court,

without giving any reason, observed that the suit of the plaintiff does not fall under Articles 1-A and 2 of the First Schedule or Articles 5, 17 and 21 of the Second Schedule and, therefore, the order apparently is illegal.

After hearing the counsel and perusing the copy of the plaint filed in Court, during the course of hearing, I am of the opinion that the order of the trial Court cannot be sustained.

The Notification dated 1st April 1983 reads as under : -

"In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (No. 7 of 1870) the State Government hereby remits in the whole of the State of Madhya Pradesh, the court fees mentioned in Articles 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule to the said Act payable on plaint by the following categories of the persons whose annual income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand, namely : -

- (i) member of Scheduled Tribes;
- (ii) member of Scheduled Castes;
- (iii) minors;
- (iv) women;
- (v) artisesn;
- (vi) unskilled labourer;
- (vii) landless labourer;
- (viii) person belonging to the weaker section of society.

Explanation. - For the purposes of this Notification : -

(i) "Member of Scheduled Castes" means a member of any caste, race or tribe or part of or group within caste, race or tribe specified as such with respect to the State of Madhya Pradesh under Article 341 of the Constitution of India;

(ii) "Member of Scheduled Tribes" means a member of any tribal community or part of or group within a tribe or tribal community specified as such with respect to the State of Madhya Pradesh under Article 342 of the Constitution of India".

A bare reading of the Notification shows that suit falling under Articles 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule, payment of court fees by the persons falling in any of the categories has ben remitted by the State Government in exercise of the powers conferred u/s 35 of the Court Fees Act (for short "the Act").

Article 1-A of Schedule I of the Act shows that it includes all types of plaint, written statement, pleading, or counter claim or memorandum of appeal (not

otherwise provided for in this Act) presented by any Civil or Revenue Court except those mentioned in Section 3 of the Act. Section 3 reads as under : -

"3. Levy of Fees in High Courts on their original sides. - The fees payable for the time being to the Clerks and officers other than the sheriffs and attorneys of the High Courts other than those of Kerala, Mysore and Rajasthan.

Levy of Fees in Presidency Small Cause Courts. - And the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns, and their several offices, shall be collected in manner hereinafter appearing."

A plain reading shows that the present suit is not a suit as contemplated u/s 3 of the Act as it is not presented to the High Court on its original side, nor a plaint presented to the Court of Small Causes at the Presidency Towns. The plaint is of the nature on which court fees is payable in accordance with Article 1-A of the Act. Therefore, the exception made in Article 1-A of the Act is not applicable.

As the Court itself has found that the plaintiff-petitioner's annual income immediately preceding the date of presentation of the suit was less than Rs. 6,000/- the Notification necessarily applies for remission of the court fees as the State Government has excepted the persons specified in the said Notification, from payment of court fees on the plaint.

In the result, the revision is allowed. The order of the trial Court is set aside and it is ordered that the trial Court shall pass an order remitting the court fees on the plaint of the petitioner in accordance with Notification of the State Government.

The revision petition is thus disposed of with no order as to costs.